



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 21, 1995

Ms. Ana Markowski Smith
Val Verde County Attorney
207 East Losoya
Del Rio, Texas 78840

OR95-1583

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24154.

The Val Verde Commissioner's Court received an open records request for, among other things, copies of "all the notes being passed during the Dec. 13, 93 Commissioners Court between County Attorney Anna Markowski and County Commissioner Robert Rodriquez." In his initial request for an open records decision regarding this matter, former county judge Val Cadena explained that there were two notes passed between yourself and Commissioner Rodriquez:

One note was from the County Attorney to a County Commissioner. The note specified wording to be used in a motion. After the motion was read, the note was returned to the Deputy County Clerk who used it as a reference when preparing the minutes of the meeting. The note subsequently was discarded.

The second note was passed from a County Commissioner to the County Attorney. The note did not pertain to any issue being discussed during the meeting. In fact, it did not pertain to any aspect of county government. The note was a personal exchange between the parties.

Because the first note no longer exists, the county need not comply with this aspect of the request. *See* Open Records Decision No. 342 (1982) (Open Records Act does not require creation of new material in response to open records request).¹

You contend that the second note is not subject to the provisions of the Open Records Act because it does not constitute "public information." We agree. Section 552.002 of the Government Code provides:

(a) In this chapter, "public information" means information that is collected, assembled, or maintained *under a law or ordinance or in connection with the transaction of official business:*

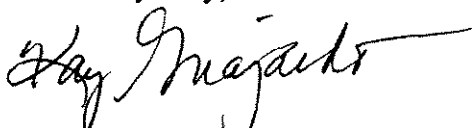
(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it. (Emphasis added.)

Based on the information the county has provided us, it appears that the second note was not collected "under a law or ordinance or in connection with the transaction of official business." The content of the note indicates that the note was intended to be purely personal in nature. As such, the note is not subject to the Open Records Act and therefore may be withheld from the public. *Compare* Open Records Decision No. 450 (1986) (handwritten notes created in connection with official duties subject to Open Records Act).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hamilton Guajardo
Assistant Attorney General
Open Records Division

KHG/RLP/RWP/rho

¹Judge Cadena expressed some concern over whether the destruction of this record constituted a violation of the Open Records Act. *See* Gov't Code § 552.351 (prohibiting *unauthorized* destruction of public records). Provisions for the preservation, retention, and destruction of local government records are set out in chapters 201 through 205 of the Local Government Code.

Ref.: ID# 24154

cc: Ms. Claudia Hopkins
Small Land Owners Association
210 Avenue L
Del Rio, Texas 78840